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300 South Grand Avenue, Suite 2600

Los Angeles, CA 90071

Tel: (213) 485-1500

Fax: (213) 485-1200

2008 OCT 31 AM 11:57

CLERK U.S. DISTRICT COURT  
CENTRAL DIST. OF CALIF.  
LOS ANGELES

BY \_\_\_\_\_

Attorneys for Defendants

EXECUTIVE TRUSTEE SERVICES, LLC (incorrectly sued herein as ETS Services, LLC) and GMAC MORTGAGE, LLC (incorrectly sued herein as "GMAC")

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WILLIAM P. GORNIK

Plaintiff,

vs.

ETS SERVICES, LLC, GMAC, and DOES  
1-50, inclusive,

Defendants.

) Case No. **CV08-07227 (Ex)**

)  
) **DEFENDANTS EXECUTIVE**  
) **TRUSTEE SERVICES, LLC AND**  
) **GMAC MORTGAGE, LLC'S**  
) **NOTICE OF REMOVAL**

) 28 U.S.C. §§ 1441, 1446 & 1331

) [Superior Court of California, County  
) of Los Angeles - West District, Case  
) No. SC 099877]

) Complaint Filed: September 22, 2008

TO THE CLERK OF THE ABOVE-ENTITLED COURT, ALL PARTIES,  
AND TO THEIR ATTORNEYS OF RECORD:

Defendants Executive Trustee Services, LLC, incorrectly named as "ETS  
Services, LLC," and GMAC Mortgage, LLC, incorrectly named as "GMAC,"

("Defendants") pursuant to 28 U.S.C. §§ 1441, 1446 and 1331 hereby remove this

action from the Superior Court of California, County of Los Angeles - West District,

to the United States District Court for the Central District of California, and state as follows:

**STATEMENT OF THE CASE**

1. On September 22, 2008, an action was commenced in the Superior Court of California, County of Los Angeles - West District, styled *William P. Gornik v. ETS Services, LLC, et al.*, Case No. SC 099877 (the "State Court Action").

2. The Complaint was filed on September 22, 2008. This Notice of Removal is being filed within 30 days of the service of the Complaint and, thus, within 30 days of the date Defendants became aware of the State Court Action. Removal is therefore timely in accordance with 28 U.S.C. § 1446(b).

3. The Complaint purports to assert three causes of action, identified and/or generally alleged as follows: (1) unfair debt collection practices; (2) predatory lending practices; and (3) RICO violations.

4. The unfair debt collection practices cause of action asserts the following statutory violations:

(a) violation of California's Rosenthal Fair Debt Collection Practices Act, including, but not limited to, California Civil Code § 1788(e) and (f);

(b) violation of the Federal Fair Debt Collections Act, 15 U.S.C. §§ 1692 *et seq.*; and

(c) violation of the Real Estate Settlement Procedures Act ("RESPA"), 12 U.S.C. §§ 2601-2617.

5. The predatory lending practices cause of action asserts the following statutory violations:

(a) violation of the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. § 1637;

(b) violation of the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601;

and

///

(c) violation of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41-58.

6. Finally, the RICO violations cause of action asserts the following statutory violations: 18 U.S.C. §§ 1961, *et seq.*

## JURISDICTION

### FEDERAL QUESTION JURISDICTION

7. This Court has jurisdiction over this matter under 28 U.S.C. § 1331 because Plaintiff's claims arise under the laws of the United States. The Supreme Court has held that "a case 'arose under' federal law where the vindication of a right under state law necessarily turned on some construction of federal law." *Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9 (1983). Here, Plaintiff alleges direct violations of the Federal Fair Debt Collections Act, RESPA, HOEPA, TILA, the FTC Act and RICO and seeks remedies purportedly pursuant to these federal statutes. (Compl. ¶¶ 20, 23, 26). Accordingly, the matter turns upon federal questions, and this Court has jurisdiction.

8. Upon information and belief, no other defendants have been named or served and therefore additional consent is not required. *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988) (the requirement for consent applies "only to defendants properly joined and served in the action.")

9. Accordingly, all properly served and joined defendants, excluding nominal, unknown, and fraudulently joined parties, have consented to this Notice of Removal.

10. Venue is proper in this Court pursuant to 28 U.S.C. §§ 84(a) and 1441(a) because the United States District Court for the Central District of California, is the federal judicial district and division embracing the Superior Court of California for the County of Los Angeles where the State Court Action was originally filed.

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1 11. Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all of the  
2 process, pleadings, and orders on file in the State Court Action or served on  
3 Defendants are attached hereto as Exhibit 1.

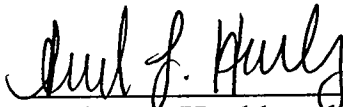
4 **CONCLUSION**

5 By this Notice of Removal and the associated attachments, Defendants do not  
6 waive any objections that they may have as to service, jurisdiction or venue, or any  
7 other defenses or objections it may have to this action. Defendants intend no  
8 admission of fact, law or liability by this Notice, and expressly reserve all defenses,  
9 motions and/or pleas. Defendants pray that the Action be removed to this Court, that  
10 all further proceedings in state court be stayed, and that Defendants receive all  
11 additional relief to which they are entitled.

12  
13 Dated: October 31, 2008

Respectfully submitted,

14  
15 LOCKE LORD BISSELL & LIDDELL LLP

16  
17 By:  \_\_\_\_\_

18 John M. Hochhausler

19 Amber L. Harley

20 Attorneys for Defendants

21 EXECUTIVE TRUSTEE SERVICES, LLC

22 GMAC MORTGAGE, LLC  
23  
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27  
28

Locke Lord Bissell & Liddell LLP  
300 South Grand Avenue, Suite 2600  
Los Angeles, CA, 90071-3119

EXHIBIT 1

09/22/2008 20:14

PAGE 12

1 Mitchell W. Roth, SBN 77962  
 2 Homan Mobasser, Esq., SBN 251426  
 3 M.W. ROTH, P.L.C.  
 4 13245 Riverside Drive, Suite 510  
 5 Sherman Oaks, CA 91423  
 6 Telephone: (818) 989-7888  
 7 Fax: (323) 372-3547

8 Attorney for Plaintiff

CONFIRMED COPY  
 OF ORIGINAL FILED  
 Los Angeles Superior Court

SEP 22 2008

John A. Gaskin, Associate Clerk

By J. Doshier, Deputy

9 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
 10 WEST DISTRICT

11  
 12 WILLIAM P. GORNIK

13 Plaintiff,

14 vs.

15 ETS SERVICES, LLC, GMAC, and DOES 1 - 50,  
 16 inclusive.

17 Defendants.

Case No.:

SC099877

LINDA K. LEFKOWITZ

COMPLAINT FOR:

1. UNFAIR DEBT COLLECTION PRACTICES
2. PREDATORY LENDING PRACTICES
3. RICO VIOLATIONS

[Unlimited Jurisdiction Case]

18  
 19 INITIAL CASE MANAGEMENT REVIEW  
 20 AND CONFERENCE JAN 12 2009

21 830 am Dept m.

AS TO ALL CAUSES OF ACTION

BY FAX

- 22 1. Plaintiff, WILLIAM P. GORNIK, is a natural person.
- 23 2. Defendant, ETS SERVICES, LLC, is a business entity, the form unknown to Plaintiff, that is
- 24 the Trustee named in Exhibit 1, and Defendant, GMAC, is the natural person or entity that has directed
- 25 and is directing said Trustee to proceed under a power of sale to foreclose.
- 26 3. Attached to the complaint as Exhibit 1 is a certain Notice of Sale, which has been issued by
- 27 Defendant, ETS SERVICES, LLC at the instance of Defendant, GMAC.
- 28

-1-  
 COMPLAINT

11/30/08 11:08:52 AM

1 4. Does 1 – 50 persons or entities that are unknown to Plaintiff. Their capacities are unknown.  
2 Plaintiff alleges that they are in some way involved in the actions complained of herein as either  
3 independent actors, or as agents or principals of the other named defendants. Plaintiff will amend this  
4 complaint to allege their true identities, capacities and roles as and when they are ascertained.  
5

6 5. Plaintiff is informed and believes, and thereupon alleges, that Defendants, ETS SERVICES,  
7 LLC, GMAC, and Does 1 – 50 are proceeding toward a Trustee's sale of the real property commonly  
8 known as 9055 Airdrome Street, Los Angeles, CA 90035, the same property identified in Exhibit 1,  
9 ostensibly to collect the unpaid balance on the note secured by the security instrument that is identified  
10 in Exhibit 1.

11 6. Plaintiff is the owner in fee of the real property identified as 9055 Airdrome Street, Los  
12 Angeles, CA 90035.

13 7. Upon information and belief, GMAC is not the holder of the note identified in the security  
14 instrument that is identified in Exhibit 1, is not in possession of the note properly endorsed to it, nor is it  
15 otherwise entitled by law in this State to initiate foreclosure under the security instrument identified in  
16 Exhibit 1.

17 8. GMAC has no present right to initiate foreclosure under the security instrument identified in  
18 the Notice of Sale attached as Exhibit 1, nor does it have the right to direct the ETS SERVICES, LLC to  
19 foreclose and sell the subject real property owned by Plaintiff. ETS SERVICES, LLC has been put on  
20 notice of Plaintiff's claim in this regard and demand has been made of ETS SERVICES, LLC to suspend  
21 any foreclosure sale unless and until it has obtained proof that GMAC actually has in its possession the  
22 original note properly endorsed to it or assigned to it as of a date preceding the notice of default  
23 recorded by ETS SERVICES, LLC. ETS SERVICES, LLC has failed and refused to suspend the sale of  
24 the property or to provide proof of the basis of the right of GMAC to initiate foreclosure under the  
25 security instrument referred to in Exhibit 1.

26 9. Plaintiff alleges that the Defendants and each of them, in so acting in this case and with  
27 respect to many other mortgage or trust deed security instruments engage in a pattern and practice of  
28 utilizing the non-judicial foreclosure procedures of this State to foreclose on properties when they do

1 not, in fact, have the right to do so, knowing that the property owners affected do not have the  
2 knowledge and means to contest the right of said Defendants to do so.

3 10. Plaintiff, through Plaintiff's attorney demanded proof of the Defendants' and each of  
4 them of their right to proceed in foreclosure in writing. No such proof or its equivalent has been offered.

5 11. Plaintiff, through Plaintiff's attorney demanded further a detailed accounting of how  
6 the stated amount necessary to be paid to redeem the property from foreclosure has been calculated so  
7 that Plaintiff could adequately evaluate Plaintiffs rights under the law with Plaintiff's presale right of  
8 redemption. See Exhibit 2, incorporated herein by reference. The response, if any, of Defendants, and  
9 each of them, has been so inadequate so as to prevent Plaintiffs from determining whether any or all of  
10 the charges included in their payoff demand were justified, appropriate and proper under the terms of  
11 obligation evidenced by the negotiable instrument secured by the security instrument identified in  
12 Exhibit 1.

13 12. The real property owned by Plaintiff that is identified in Exhibit 1 is unique.  
14 Therefore, should Defendants, and each of them, not be enjoined, Plaintiff will suffer irreparable injury  
15 for which there is no adequate remedy in law when Defendants proceed to sell the subject property at  
16 foreclosure sale.

17 13. In all of the wrongful acts alleged in this complaint, the Defendants and each of them  
18 have utilized the United States mail in furtherance of their conspiracy to both unlawfully collect on  
19 negotiable instruments when they were not entitled under the law to do so, and, assuming *arguendo* that  
20 they do have the right to proceed to foreclose under the note, to profit from those actions in amounts  
21 greater than their rights under the note to do so.

22 14. Defendants, and each of them, in committing the acts alleged in this and in other  
23 cases are engaging in a pattern of unlawful activity.

24 ///

25 ///

26 ///

27 ///

28



15. As a result thereof, Plaintiff has been damaged in having to hire attorneys before bringing this action and to bring this action to enjoin the threatened non-judicial foreclosure of the subject real property, and has had to and will have to incur attorneys fees to stop the wrongful acts of the Defendants and each of them. Plaintiff has been damaged in other ways that are not readily apparent at this time, but will amend this complaint to allege further damages as they are determined.

16. In pursuing non-judicial foreclosure, Defendants and each of them represented that they had the right to payment under the note, payment of which was secured by the security instrument that is identified in Exhibit 1 to this Complaint.

17. The true facts were that they were not in possession of the note and either holders of the note or non-holders of the note entitled to payment, as those terms are used in the Uniform Commercial Code §§ 3-301, 3-309, and therefore they were proceeding to foreclose non-judicially without right under the law. Further, they added costs and charges to the payoff amount of the note that were not justified and proper under the terms of the note or the law.

18. The Defendants and each of them, misrepresented the facts intending to either force Plaintiff to pay large sums of money to Defendants and each of them to which they were not entitled under the law, or to abandon Plaintiff's property to foreclosure sale.

#### FIRST CAUSE OF ACTION

##### UNFAIR DEBT COLLECTION PRACTICES

19. Plaintiff realleges paragraphs 1 – 18 as if fully set forth herein.

20. Plaintiff is informed and believes and thereupon alleges that the Defendants and each of them, in the taking the actions aforementioned, have violated provisions of California's Rosenthal Fair Debt Collection Practices Act, including but not limited to Civil Code § 1788 (e) and (f), and the Federal Fair Debt Collections Act, 15 U.S.C., Title 41, Subchap. V, §§ 1692 *et seq.*, and the Real Estate Settlement Procedures Act (RESPA), 12 U.S.C. §§ 2601-2617.

#### SECOND CAUSE OF ACTION

##### PREDATORY LENDING PRACTICES

21. Plaintiff realleges paragraphs 1 – 20 as if fully set forth herein.

22. Assuming *arguendo* that Defendant, GMAC does have the right under the law of negotiable instruments in this State, by endorsement, assignment, agency or otherwise, to receive payment under a valid note, payment of which is secured by the security instrument that is identified in Exhibit I, and to initiate foreclosure under a power of sale contained therein, if any, then Defendant, GMAC is subject to defenses that would have been available against Mortgageit Inc., the initial Lender identified in the security instrument that is referred to in Exhibit I.

23. Plaintiff is informed and believes and thereupon alleges that Mortgageit Inc. has engaged in deceptive practices with respect to Plaintiff in violation of the Home Ownership and Equity Protection Act ("HOEPA"), 15 U.S.C. §§ 1637, the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601, Regulation Z, 12 C.F.R. 226, and the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. §§ 41-58, the specifics of which are unknown, but which are subject to discovery and with respect to which the specifics will be alleged by amendment to this complaint when ascertained.

24. One or more of the predatory lending practices referred to in the previous paragraph permits, under the law, one or more defenses or remedies, the specifics of which will be alleged by amendment to this complaint when ascertained.

### THIRD CAUSE OF ACTION

#### RICO VIOLATIONS

25. Plaintiff realleges paragraphs 1 – 24 as if fully set forth hereat.

26. In doing the aforesaid acts, Defendants and each of them were participating in and have participated in a scheme of racketeering as that term is defined in RICO, 18 U.S.C §§ 1961 *et seq.*

27. Plaintiff is therefore entitled to the remedies available under RICO in civil actions.

WHEREFORE, Plaintiff prays that:

1. Defendants, ETS SERVICES, LLC, GMAC, and Does 1 - 50 and each of them, be prohibited from conducting any sale of the subject real property pending the outcome of this case;

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///

///

1  
2 2. Defendants, ETS SERVICES, LLC, GMAC, and Does 1 – 50, and each of them, be  
3 permanently enjoined from any and all attempts to foreclose on the subject real property unless and until  
4 it can present proof that it is entitled, under the law of negotiable instruments in force in Ca, to enforce  
5 the underlying promissory note described in the security instrument that is indentified in Exhibit I;

6 3. That Plaintiff be awarded monetary damages against the Defendants, ETS  
7 SERVICES, LLC, GMAC, and each of them, jointly and severally, that Plaintiff incurred due to the  
8 need to bring this action for injunctive relief according to proof,

9 4. That Plaintiff be awarded statutory damages for Unfair Debt Collection practices  
10 under the federal and California statutes;

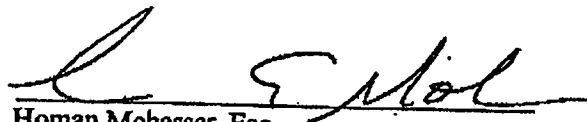
11 5. That attorneys fees be awarded Plaintiff as may be permitted by law;

12 6. That Plaintiff be awarded treble damages as permitted by law,

13 7. That prejudgment interest be awarded Plaintiff as permitted by law;

14 8. For such other and further equitable relief, declaratory relief and legal damages as  
15 may be permitted by law and as the court may consider just and proper.

16  
17 Dated: September 22, 2008

18   
19 Homan Mobasser, Esq.  
20 Attorney for Plaintiff  
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-6-  
COMPLAINT

Exhibit "1"

Exhibit 1, Pg. 11

RECORDING REQUESTED BY  
ETS Services, LLC

AND WHEN RECORDED MAIL TO:  
ETS Services, LLC  
2255 North Ontario Street, Suite 400  
Burbank, California 91504-3120

T.S. No. GM-143456-C  
Loan No. 0713278562

SPACE ABOVE THIS LINE FOR RECORDERS USE

### NOTICE OF TRUSTEE'S SALE

**YOU ARE IN DEFAULT UNDER A DEED OF TRUST DATED 4/23/2007. UNLESS YOU TAKE ACTION TO PROTECT YOUR PROPERTY, IT MAY BE SOLD AT A PUBLIC SALE. IF YOU NEED AN EXPLANATION OF THE NATURE OF THE PROCEEDING AGAINST YOU, YOU SHOULD CONTACT A LAWYER.**

A public auction sale to the highest bidder for cash, cashier's check drawn on a state or national bank, check drawn by a state or federal credit union, or a check drawn by a state or federal savings and loan association, or savings association, or savings bank specified in Section 5102 of the Financial Code and authorized to do business in this state, will be held by the duly appointed trustee. The sale will be made, but without covenant or warranty, expressed or implied, regarding title, possession, or encumbrances, to satisfy the obligation secured by said Deed of Trust. The undersigned Trustee disclaims any liability for any incorrectness of the property address or other common designation, if any, shown herein.

**TRUSTOR: WILLIAM P. GORNIK, AN UNMARRIED MAN**

Recorded 5/1/2007 as Instrument No. 20071043273 in Book , page of  
Official Records in the office of the Recorder of Los Angeles County, California.

Date of Sale: 8/23/2008 at 10:30 AM

Place of Sale: At the west side of the Los Angeles County Courthouse, directly facing  
Norwalk Blvd., 12720 Norwalk Blvd., Norwalk, California

Property Address is purported to be. 9055 AIRDRONE STREET

LOS ANGELES, California 90033-0000

APN #: 4306-011-007

The total amount secured by said instrument as of the time of initial publication of this notice is \$1,048,979.28, which includes the total amount of the unpaid balance (including accrued and unpaid interest) and reasonable estimated costs, expenses, and advances at the time of initial publication of this notice.

Date: 8/29/2008

ETS Services, LLC  
2255 North Ontario Street, Suite 400  
Burbank, California 91504-3120  
Sales Line: 714-730-2727

Christine Gomez-Schwab, TRUSTEE SALE OFFICER



Exhibit "2"

# MW Roth, PLC

A Professional Law Corporation

13245 Riverside Drive, Ste. 320  
Sherman Oaks, CA 91423

Office 818.989.7888

facsimile 323.372.3547  
www.mwroth.com

Mitchell Roth  
John Dale Kerr  
Kristine Takvoryan  
Catalina L. Manzano  
Homan Mobasser  
Edward Jacobs II

September 16, 2008

By Facsimile Only To (818) 260-1850

Christine Gomez-Schwab  
Trustee Sale Officer  
ETS Services, LLC  
2255 North Ontario Street, Suite 400  
Burbank, CA 91504-3120

Re: Trustee Sale No: GM-143456-C  
Loan No: 0713278562  
Property Address: 9055 Airdrome Street, Los Angeles, California, 90035  
Our File Number: 1017/913

Dear Christine Gomez-Schwab:

**Read this letter carefully. Failing to take appropriate action may result in ETS SERVICES, LLC, and the persons or entities initiating the above referenced foreclosure sale, being named as a Defendant in a RICO<sup>1</sup> action. ETS SERVICES, LLC will not be able to avoid liability or the need to interpose a defense of such an action by a declaration of non-monetary interest.**

Let me explain.

---

<sup>1</sup> RICO is the acronym for the federal Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961 *et seq.* which, in part, states, "It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of section 2, title 18, United States Code, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce."

Christine Gomez-Schwab  
ETS Services, LLC  
September 16, 2008  
Page 2

I am the attorney for William P. Gornik, the owner of the property. We have no information and documentation that the entity or person that initiated the foreclosure through your offices is entitled to do so.

The right to foreclose by judicial or non-judicial action depends upon the right of the Beneficiary to payment under the note, and that depends upon the Beneficiary being able to document its full entitlement to do so under Article 3 of the California Commercial Code §§ 3301, 3309. The law is well settled. Enforcement of a note which is a negotiable instrument, by foreclosure or otherwise, requires that the party seeking payment be in possession of the original note.

California Law is well established that a deed of trust or mortgage by itself is ineffective to allow foreclosure. A promissory note is personal property and the deed of trust or mortgage securing a note is a mere incident of the debt it secures, with no separable ascertainable market value. Civ. Code §§ 657, 663. *Kirby v. Palos Verdes Escrow Co.* (1986) 183 Cal. App. 3d 57, 62. Likewise, transfers of the note and mortgage fundamentally flow back to the note. "The assignment of a mortgage without a valid transfer of the indebtedness confers no right, since debt and security are inseparable and the mortgage alone is not a subject of transfer." *Hyde v. Mangan* (1891) 88 Cal. 319; *Johnson v. Razy* (1919) 181 Cal. 342; *Bowman v. Sears* (1923) 63 CA 235; *Treat v. Burns* (1932) 216 Cal. 216.

The right, therefore, to foreclose by judicial or non-judicial action depends upon the right of the Beneficiary (the initiating party) to payment under the note, and that right depends upon the rights of the Beneficiary under Commercial Code §§ 3301, 3309, which govern the right to payment under a negotiable instrument.

The enforceability of a negotiable instrument arises only from various attributes of possession of the underlying instrument. Even where an instrument has been transferred, enforceability is still determined based upon possession. There are only three (3) instances, all arising from possession, which allow a person or entity to enforce a negotiable instrument.

California Commercial Code § 3301 limits instrument enforcement to the following:

"Person entitled to enforce" an instrument means (a) the holder of the instrument, (b) a nonholder in possession of the instrument who has the rights of a holder, or (c) a person not in possession of the instrument who is entitled to enforce the instrument pursuant to Section 3309 or subdivision (d) of Section 3418. A person may be a person entitled to enforce the instrument even though the person is not the owner of the instrument or is in wrongful possession of the instrument. (Emphasis added)"

The last sentence of 3301 explains why possession of the instrument is a necessary prerequisite to enforcement of the note. The Lender is the one that chooses to evidence the debt in the form of a negotiable instrument for purposes of liquidity. The Lender and

MW Roth, PLC



Christine Gomez-Schwab  
ETS Services, LLC  
September 16, 2008  
Page 3

those who would assert a right to payment of the debt can hardly be heard, therefore, to complain that the law requires the actual possession of the original note before being able to enforce the note. The attempt to enforce a note by those that are not in actual possession of the instrument results in the unlawful collection a debt.

Any right to initiate foreclosure of the security interest created by the Trust Deed recorded on N/A as Instrument No. N/A in the official records in the Office of the County Recorder for Los Angeles County depends upon the actual possession of the original note by the party initiating the foreclosure and for whose benefit it is being initiated. As a Trustee and a debt collector, you participate in collection at the risk that your principal may not, in fact, be in possession of the original note properly and timely endorsed or assigned to it. If your principal is not, and you, motivated by profit, proceed because of a lack of adequate due diligence under the assumption that it is entitled to payment under the note, and if we can show that this is a pattern of activity, you are, in our view, guilty of violating RICO and liable for treble damages and attorney's fees under RICO's provisions for a private (civil law) remedy.

An April 30, 2008 article in the Wall Street Journal reported only the latest example of the abuse by many substantial institutions in the mortgage industry. "The sanctions against Wells Fargo (\$250,000) arose from the case of a homeowner who filed for bankruptcy protection in 2002. The company that handled her mortgage payments incorrectly characterized itself as the legal holder of the mortgage, which entitled it to seek relief as a creditor."

With the current state of the mortgage industry in general, and sub-prime loans like this one in particular, we know that loans have been packaged and securitized. Many of the originating lenders have gone out of business entirely and/or their portfolios have been purchased at fire sale prices. Many of the underlying original notes have been lost or misplaced and many foreclosures throughout the country are proceeding without the legal right that stems from the proper transfer of the debt, including the proper transfer of the original note.

This firm and other consumer protection lawyers have been filing suit against those that would take unfair advantage of homeowners that are stressed and uninformed of the details and technicalities of the law by pursuing foreclosure without having possession of the original note, or by overcharging for costs of collection, or both.

If you proceed to foreclose without proper proof of entitlement, and the party for whom you are acting is not entitled to payment under the strict requirements of the Commercial Code, you are assisting in fraudulent activity. A claim of ignorance will not be an adequate defense. Therefore, you are best advised to insist upon proper proof before proceeding further. Besides RICO, your actions may prove to be a violation of federal and state laws collection laws, too.

MW Roth, PLC

Christine Gomez-Schwab  
ETS Services, LLC  
September 16, 2008  
Page 4

According to my client, the initial lender and holder of the note was MORTGAGEIT INCORPORATION. We have reason to expect that the note has been sold off and that it is no longer owned by MORTGAGEIT INCORPORATION.

Please confirm to me in writing the identity of the person or entity that initiated these foreclosure proceedings, including names and addresses, and indicate how that person or entity came to possess the right to payment under the note. Also, please confirm that this person or entity is in actual possession of the original note properly endorsed to it so that upon payment of the amount due under the note it can be properly surrendered. Again, enforcement of payment on a negotiable instrument through exercising rights under a security instrument requires, with very few exceptions, actual possession of the original note by the person entitled under the note to payment.

I suggest to you two options.

- (1) Provide confirmation to me, on behalf of my client, that you are suspending the foreclosure process until you give me further notice of at least 21 days, or
- (2) Produce to me proof that your customer is and was in actual possession of the original note properly endorsed or assigned to it prior to the recording of the notice default.

Failure to do one or the other will result in the filing of a lawsuit against ETS SERVICES, LLC and its customer pursuing an injunction, treble damages and attorney's fees, under RICO and under other available theories.

By proof I mean, at least, a declaration under penalty of perjury from a person in authority for the beneficial owner and holder of the note. The declaration must authenticate by attachment a true and correct copy of the original note and state that the original is in his or her possession. And, the declaration must attach any supporting documentation showing either the proper endorsement or written assignment of the note, or other documentation establishing the facts that are claimed to be the basis of the entity's claimed right to payment under the note.

Please forward a copy of this letter to the person or entity that is directing you to proceed in this matter. If you are unwilling or unable to do so, please notify me immediately in writing with the necessary information so that I can attempt to do so myself. If you do not send me the necessary information about your customer in writing, I will take that as confirmation that you forwarded a copy of the letter.

If you would prefer further communication on this matter to be directed to an attorney or legal department for your company, please let me know by return fax or e-mail, including the attorney's name, address and phone number.

MW Roth, PLC

09/23/08

1 RECORDING REQUESTED BY  
2 AND WHEN RECORDED MAIL TO:  
3 Mitchell Roth, CA SBN 77962  
4 Homan Mobasser, Esq., SBN 251426  
5 M.W. Roth, PLC  
6 13245 Riverside Drive, Suite 510  
7 Sherman Oaks, CA 91423

Attorney for Plaintiff(s)

**COPY**



20081711024

.....  
Has not been compared with original.  
Original will be returned when  
processing has been completed.  
LOS ANGELES COUNTY REGISTRAR - RECORDER

Space Above This Line for Recorder's Use

8 SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES  
9 WEST DISTRICT

12 WILLIAM P. GORNIK,

13 Plaintiff,

14 vs.

15 ETS SERVICES, LLC, GMAC and DOES 1 - 50,  
16 inclusive,

17 Defendants.  
18

Case No.: SC099877

NOTICE OF PENDENCY OF ACTION  
[CCP Section 405.20]

19  
20 Notice is given that the above-entitled action was filed in the above-entitled court on September  
21 22, 2008 by plaintiff(s), WILLIAM P. GORNIK against, defendant(s), ETS SERVICES, LLC, GMAC  
22 and Does 1 - 50. The action affects title and the right to possession of 9055 Airdrome Street, Los  
23 Angeles, CA 90035, the property identified in the complaint.

24 The real property affected by the action is located in Los Angeles County, California, and is  
25 described as follows:

26 APN 4305-011-007

27 Code of Civil Procedure Section 405.22 provides that "Except in actions subject to Section  
28 405.6, the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by

-1-

NOTICE OF PENDENCY OF ACTION [CCP Section 405.20]

**COPY**

1 registered or certified mail, return receipt requested, to all known addresses of the parties to whom the  
 2 real property claim is adverse and to all owners of record of the real property affected by the real  
 3 property claim as shown by the latest county assessment roll. If there is no known address for service  
 4 on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to  
 5 that effect may be recorded instead of the proof of service required above, and the service on that party  
 6 or owner shall not be required. Immediately following recordation, a copy of the notice shall also be  
 7 filed with the court in which the action is pending. Service shall also be made immediately and in the  
 8 same manner upon each adverse party later joined in the action.

9 **I am the attorney of record in the above captioned case.** In signing this notice I state that I  
 10 have fully complied with Code of Civil Procedure Section 405.22 by serving each of the named  
 11 defendants by certified mail, return receipt requested, which constitute all of the parties to whom the  
 12 real property claim is adverse. The Plaintiff(s), who I represent, are all of the owners of record of the  
 13 real property affected.

14 I make this statement under penalty of perjury under the laws of the State of California and the  
 15 statements contained herein are true and correct of my personal knowledge. Executed the date  
 16 indicated below at Sherman Oaks, California.

17 Dated September 22, 2008



18 Homan Mobasser, Esq.

19 Attorney for Plaintiff

<b>I (a) PLAINTIFFS</b> (Check box if you are representing yourself <input type="checkbox"/> ) <b>WILLIAM P. GORNIK</b>		<b>DEFENDANTS</b> EXECUTIVE TRUSTEE SERVICES, LLC (incorrectly sued herein as ETS SERVICES, LLC), GMAC MORTGAGE, LLC (incorrectly sued herein as GMAC), and DOES 1-50, inclusive																									
<b>(b)</b> Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Mitchell W. Roth, Esq. Homan Mobasser, Esq. M. W. ROTH, P.L.C. 13245 Riverside Drive, Suite 510 Sherman Oaks, California 91423 Tel: (818) 989-7888; Fax: (323) 372-3547		Attorneys (If Known) John M. Hochhausler, Esq. Amber L. Harley, Esq. LOCKE LORD BISSELL & LIDDELL LLP 300 South Grand Avenue, 26th Floor Los Angeles, California 90071 Tel: (213) 485-1500; Fax (213) 485-1200																									
<b>II. BASIS OF JURISDICTION</b> (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		<b>III. CITIZENSHIP OF PRINCIPAL PARTIES</b> - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table border="1" style="width:100%"><tr><td></td><td>PTF</td><td>DEF</td><td></td><td>PTF</td><td>DEF</td></tr><tr><td>Citizen of This State</td><td><input type="checkbox"/> 1</td><td><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td><input type="checkbox"/> 4</td><td><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td><input type="checkbox"/> 2</td><td><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td><input type="checkbox"/> 5</td><td><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td><input type="checkbox"/> 3</td><td><input type="checkbox"/> 3</td><td>Foreign Nation</td><td><input type="checkbox"/> 6</td><td><input type="checkbox"/> 6</td></tr></table>			PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																						
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Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																						
<b>IV. ORIGIN</b> (Place an X in one box only.) <input type="checkbox"/> 1 Original Proceeding <input checked="" type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify): <input type="checkbox"/> 6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge																											
<b>V. REQUESTED IN COMPLAINT: JURY DEMAND:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check 'Yes' only if demanded in complaint.) <b>CLASS ACTION</b> under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>MONEY DEMANDED IN COMPLAINT:</b> \$																											
<b>VI. CAUSE OF ACTION</b> (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 15 USC §§ 1692 et al.; 12 USC §§ 2601-2617; 15 USC § 1637; 15 USC § 1601; 15 USC §§ 41-58; 18 USC §§ 1961 et al.																											
<b>VII. NATURE OF SUIT</b> (Place an X in one box only.) <table border="1" style="width:100%"><tr><td style="width:16.6%"><b>OTHER STATUTES</b> <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. 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FOR OFFICE USE ONLY: Case Number:

CV08-07227

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.



UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA  
CIVIL COVER SHEET**VIII(a). IDENTICAL CASES:** Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**VIII(b). RELATED CASES:** Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): \_\_\_\_\_

**Civil cases are deemed related if a previously filed case and the present case:**

- (Check all boxes that apply)
- ☐
- A. Arise from the same or closely related transactions, happenings, or events; or
- 
- ☐
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- 
- ☐
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- 
- ☐
- D. Involve the same patent, trademark or copyright,
- and
- one of the factors identified above in a, b or c also is present.

**IX. VENUE:** (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which
- EACH**
- named plaintiff resides.
- 
- ☐
- Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which
- EACH**
- named defendant resides.
- 
- ☐
- Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Executive Trustee Services (Florida) GMAC Mortgage, LLC (Texas)

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which
- EACH**
- claim arose.
- 
- Note: In land condemnation cases, use the location of the tract of land involved.**

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

\* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

**Note:** In land condemnation cases, use the location of the tract of land involvedX. SIGNATURE OF ATTORNEY (OR PRO PER):  Date October 31, 2008**Notice to Counsel/Parties:** The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)**Key to Statistical codes relating to Social Security Cases:**

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

**NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY**

This case has been assigned to District Judge Philip S. Gutierrez and the assigned discovery Magistrate Judge is Charles Eick.

The case number on all documents filed with the Court should read as follows:

**CV08- 7227 PSG (Ex)**

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :  
**NOTICE TO COUNSEL**

*A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).*

Subsequent documents must be filed at the following location:

☒ **Western Division**  
312 N. Spring St., Rm. G-8  
Los Angeles, CA 90012

☐ **Southern Division**  
411 West Fourth St., Rm. 1-053  
Santa Ana, CA 92701-4516

☐ **Eastern Division**  
3470 Twelfth St., Rm. 134  
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

FILED

2008 OCT 31 PM 12:01

CLERK, U.S. DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

BY \_\_\_\_\_

**WILLIAM P. GORNIK**

PLAINTIFF(S)

V.

**ETS SERVICES, LLC., ET AL.**

DEFENDANT(S).

CASE NUMBER

**CV08- 7227 PSG (Ex)**

**NOTICE TO PARTIES OF ADR PILOT  
PROGRAM**

Dear Counsel,

The district judge to whom the above-referenced case has been assigned is participating in an ADR Pilot Program. All counsel of record are directed to jointly complete the attached ADR Pilot Program Questionnaire, and plaintiff's counsel (or defendant in a removal case) is directed to concurrently file the Questionnaire with the report required under Federal Rules of Civil Procedure 26(f).

Clerk, U.S. District Court

10/31/08

Date

By: NLONGORI

Deputy Clerk